Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

GERARD BENLOLO , ET AL.,
Petitioners,
v.
FRENCH MEDICAL BOARD OF PHYSICIANS
ET AL.,
Respondents.

On Petition For Writ of Certiorari To the United States Court of Appeals For The Ninth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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Representing All *Pro Se* Petitioners
Date: February 6 , 2011

QUESTIONS

1) Did the Ninth Circuit conflicts with the second circuit in *Abdullahi* and contradicts congressional intent from the scope of ATS or TVPA by excluding patients from the scope of ATS or TVPA when killed by medical state-actors inside a public hospital by medical professionals ?

2) Does a violation to the right of life encompass the definition of summary execution under ATS and of extrajudicial killing under international law and under the TVPA and therefore directly actionable under ATS or TVPA ?

3) Had the Ninth circuit authority to deny aliens' access to a U.S court after petitioners have exhausted their local and regional domestic remedies asserting they are under active political persecution

and victims of violations of the law of nations by respondents ?

4) Did the Ninth circuit judges violates the judicial code of conduct and the 14th Amendment when it dismissed *sua sponte* valid claims of *jus cogens* norms violations and failed to comply with Sosa inquiry and to reach the merits question ?

5) Did petitioners allege a violation of the law of nations by asserting that medical responders' conduct violated and continue to violate this ethical norm "do not harm " that obligates physicians to be healers and protectors of patients ?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Ninth Circuit Petitioners are Gerard Benlolo Jean Marc Benlolo and Dr Patrick Benlolo are sons of the plaintiff and victim Elie Benlolo .The deceased victim was a victim of Holocaust and a WWII Veteran .They were plaintiffs in the District Court and appellants in the Court of Appeals. They bring this action on their own behalf and on behalf of their father Elie Benlolo and a certified class of similarly situated persons. Petitioners are French Citizens and French residents

Respondents were not defendants in the District Court and not appellees in the Court of Appeals because the dismissed *sua sponte* Petitioners' claims

Bordeaux University Hospital is a French public hospital .It has regular contacts with California .Its medical activity is a commercial activity . National French Medical Board of Physicians ..Dr Jean Marc Orgogozo is neurologist chief of service of Neurology ,Dr Jean Pierre Castel is chief of service of Neurosurgery , Dr Emmanuel Cuny . is neurosurgeon in Department of Castel ,Dr Abdelghim Mesli is resuscitator in Department of Castel , Philippe Dabadie chief of emergency department ,Jane Doe I is a nurse of emergency department of Dr Dabadie .Dr Guillaume emergency physician and resuscitator Jane Doe II head physician of emergency department .Dr,Tatiana

Belooussof physician in the department of Dabadie . Dr Philippe Gadda neurologist in the service of Dr Orgogozo , Dr Alain Rougier . is neurosurgeon in the service of Dr Castel ,Alain Herriaud is director of university Bordeaux hospital Pellegrin ..Bernard Glorion was former president of National Board of physicians ,Dr Claude Boisseau physician and is the general secretary of department board of physicians ,Dr Frederic Laurentjoye president of departmental board of physicians ,Dr Jean Pierre Chassaigne president of Regional French Board of Physicians..Dr Bertrand Tavernier was president of Board of Administration of Bordeaux Hospital in 2000 , he is physician and professor of radiology. Alain Juppé since 2006 until today is president of board of administration of Bordeaux hospital .Jacques Dahan and Gilbert

Collard Plaintiffs' lawyers petitioners are ignorant of the true full names of Defendants sued herein Jane Doe I and Jane Doe II and of the first name of Dr Guillaume and therefore sues these defendants in such fictitious nameso . All respondents are French citizens and French residents .

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OPINIONS BELOW

The opinion of the Court of Appeals is reprinted in the Appendix to the Petition ("Pet. App.") at 1a-. The District Court's opinion is reprinted at Pet. App. 2a- Both orders are unpublished

JURISDICTION

The judgment of the United States Court of Appeals was issued on October 15, 2010 . The jurisdiction of the district court invoked by petitioners was under 28 U.S.C . § 1350 under 28 U.S.C. § 1331 for federal question personal jurisdiction with proper service for Hospital of Bordeaux and respondents having contacts with California and/or United States under 28 U.S.C § 1391(a) (3) , §1391 (d) and § 1391 (b) if long arm statute of California courts California's

long-arm statute, Cal. Civ. Proc. Code S 410.10 with exercise of Federal Rule of Civil Procedure 4(k)(2) permits personal jurisdiction on respondents .Petitioners assert a nexus between Plaintiffs' claims and California state ., This Court has jurisdiction over this petition under rule 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) The Alien Tort Statute ("ATS"), 28 U.S.C. §1350 provides that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

2) The Torture Victim Protection Act (« TVPA »), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 (note)). An individual who, under actual or apparent authority, or color of law, of any foreign nation--(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death Torture Victim Protection Act of 1991'. 102nd Congress (1991-1992) H.R.2092.ENR .

Supreme Court Rule 10 provides that a "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling

reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this

Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

4) The Equal Protection Clause of Section 1 of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

5) Code of Judicial Conduct of the American Bar Association,1972 (excerpts)

Canon 1.,2 § 3 "A Judge shall uphold the integrity and independence of the judiciary. 2. A Judge shall avoid impropriety and the

appearance of impropriety in all of the judge's activities. A Judge shall perform the duties of judicial office impartially and diligently".

STATEMENT .OF THE CASE

A. Factual Background

Petitioners filed from France during the ten-year statute their first complaint and invoked federal claims ATS and TVPA for Torture, Extrajudicial Killing, Crimes Against Humanity ,Political Persecution, for their deceased father and for themselves .Patient Elie Benlolo has been planned to be carried to California in UCLA Medical Center to be treated by Neil Martin. Dr Patrick Benlolo was on

California in April 2000 and in contacts with his American colleague .Family collectively was unlawfully punished by Hospital of Bordeaux , French Board of Physicians after their complaint for the disability of the mother Semha Benlolo victim of denial of treatment, without compensation All family Benlolo 's members including a physician were blacklisted . Harm of a Jewish family and committed by State-agents from a friendly country are of an exceptional gravity..Petitioners have exhausted all judicial remedies , and all diplomatic remedies .

B. Proceedings Below

Plaintiffs were obliged by the District court to file a Forma Pauperis application because petitioners want to pay the fee and the court refused them available payment from ,France Then the court

issued a dismissal *sua sponte* order. The Court of appeals issued a brief time order but changed its mind and affirmed in a summary civil disposition by the below court

REASONS FOR GRANTING THE PETITION

A decision of this court is required to settle the matter The implications are of considerable consequences and vital importance . And as always, denial of certiorari does not constitute an expression of any opinion on the merits. This Court usually remands for consideration of questions not decided below .The denial of certiorari will be for petitioners who have exhausted their domestic remedies a nullification of ATS and TVPA statutes for aliens victims of most severe human rights abuses who

have exhausted their domestic remedies . They paid a high price for these remedies with violent acts of retaliation on their disabled mother .*See, e.g.*, *Mujica v. Occidental Petroleum Corp*, 381 F. Supp. 2d 1134, 1147 (C.D. Cal. 2005), *Doe v. Qi*, 349 F. Supp. 2d 1258, 1319 (N.D. Cal. 2004) .This court is mandatory under rule 10 to review this important case .

France is intervening in the litigation .see S*iderman Blacke v. Republic of* Argentina 965 F.2d 699,722 (9th Cir. 1992) and 28 U.S.C.§ 1605(a)(1). « The evidence indicates that Argentina deliberately involved United States courts in its efforts to persecute Jose Siderman. If Argentina has engaged our courts in the very course of activity for which the Sidermans seek redress, it has waived its immunity as to that redress. » Petitioneers allege claims « based upon' an 'identifiable nexus' between the

claim and the commercial activity at issue.*See Rush-Presbyterian-St. Luke's Med. Ctr. v. Hellenic Republic*, 877 F.2d 574, 582 (7th Cir. 1989). 28 U.S.C.§ 1605(a)(1).

I- THIS COURT MUST EXERCISE ITS SUPERVISORY POWER AND REVIEW THIS IMPORTANT ISSUE WHICH WAS NOT ADDRESSED BY THE NINTH CIRCUIT

Article III of the U.S Constitution gives the right to this Court for supervisory power over federal courts to impose procedure rules *Mc Nabb v. U.S* 318 U.S. 332 (1943)

The decision of the Ninth Circuit creates a judge-made rule of decision that denies the victims of human rights abuses the civil remedy embraced by

international law and U.S. policy..The TVPA, like the ATCA, furthers the protection of human rights and helps "carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights." (TVPA ,Pub. L. No. 102-256, 106 Stat. 73 .) .There is no legal basis in law, or fundamental American values to deny adjudication of this case .The Ninth circuit unlawfully dismissed this case for non legal reasons. Petitioners have exhausted their domestic and regional remedies .*See Banco Nacional de Cuba v. Sabattino* 376 U.S 398 , 422-423 (1964), [Judges] cannot shirk their responsibilities [to apply congressional legislation] merely because [their] decision may have significant political overtones "*Japan whaling Assn' v. American Cetacean Soc.* 478 U.S 221,30(1986) ;. The Ninth

circuit never addressed the issue and let European Aliens in total confusion and manifest injustice .It arbitrarily narrows the scope of the ATS and nullify this remedy for serious violations of customary international .

Proving a breach of the Hippocratic Oath's ethical obligation to "do no harm" was central to the conviction of the Nazi doctors at the Nuremberg Trials for non-consensual brutal experimentation , sterilization, and active voluntary euthanasia . The heart of the Nazi genocide was the "destruction of the boundary between healing and killing" Jay Lifton '*the Nazi Doctors Medical Killing and the Psychology of Genocide"* at 14 ...Basic books ,1986 .

Total impunity of perpetrators after two alleged murders committed by state actors in French hospitals , as alleged in the Complaint, in the course

of an ongoing persecution , can and compel to confer subject matter jurisdiction on federal courts under the ATS and the TVPA because petitioners have exhausted their local and regional remedies before filing before the District court of California ,Respondents' conduct have engaged in official action for purposes of jurisdiction under the ATS and the TVPA. The Ninth circuit erred by denying to adjudicate this case .

Petitioners were victims of egregious legal errors , and denial of due process, by a court assuming an adversarial role . This Court must be concerned that dismissing an action prior to service disrupts the orderly process of the case, deprives the court of the assistance of opposing counsel in clarifying the issues, risks creating the impression that the Ninth circuit has abandoned the role of neutral arbiter by

conducting a private litigation with the petitioners , and therefore bypasses the American tradition of adversarial proceedings .

"No jurisdiction" and "with prejudice" are mutually exclusive. The *Rooker-Feldman* doctrine is a rule of federal jurisdiction. A suit dismissed for lack of jurisdiction cannot *also* be dismissed "with prejudice"; that's a disposition on the merits, which only a court with jurisdiction may render

Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)).

This Court must protect "the values we share with a wider civilization "(*Lawrence v. Texas* 123 S. Ct 2472,2483 (2003)) and let this case proceed as ATS and fairness compel because we belong to a " world

community "(*Atkins v. Virginia* 536 U.S 304,316 n.21 (2002)).and ensure U.S credibility to fulfill its obligations towards nations and the Jewish people.

Petitioners are victims by respondents of a breach of the Nuremberg Trials Resolutions in the medical and persecution part and in relation with the Holocaust and Nazi doctors medical experimentations on Jewish civilians .

They were dismissed in violation of due process and against the plain reading of the statutes and their purpose *See Morales v. TWA* 504 U.S 374,384 (1992)

II-THE NINTH CIRCUIT DENIED PETITIONERS ACCESS TO A US COURT AND EQUAL PROTECTION UNDER THE 14TH AMENDMENT

A-Ninth Circuit's Had Power to Adjudicate this Case and Its Void Decision Is Inconsistent with Complaint' Claims and Fair and Usual Course of Proceedings

1) The Handling of this Case by the California Courts Represents a Profound Departure from "Traditional" Procedure In ATS litigation and Jurisprudence

.It's difficult to imagine more egregious examples of the alleged violation of human rights under international law, with a violation of customary international law norms that forbids State-sponsored persecution of Jewish citizens , medical killing of patients and the deprivation of their fundamental human rights or a more appropriate case for ATS jurisdiction

The Ninth Circuit' radically departs from principles of litigating ATS claims by refusing to adjudicate this case where patients, a doctor and finally a whole Jewish family are victims by medical respondents and of the most severe human rights abuses. Merits were never addressed by the below Courts .

Pro Se standards were denied to petitioners whereas "pro se litigants are untrained in the law "*Alley v. Dodge Hotel* 431 U.S. 958(1977).

And *see Mohammad v. Bin Tarraf*, No. 02-7627, 2004 U.S. App. LEXIS 19874 (2nd Cir. 2004) *pro se* plaintiff ..was granted "a opportunity to leave to amend see rule 15(b) vacated and remanded to permit to amend "

The Ninth circuit denied petitioners before the district court and denied oral argument as other plaintiffs got , even if they were dismissed after a review *de novo See Amergi v .Palestian Authority* No. 09-13618, 2010 U.S. App. LEXIS 16238 (11th Cir. July 27, 2010) , Enemy aliens combatants were granted by this Court to a fair hearing to challenge their status but aliens alleging severe human rights abuses and violations of international law couldn't challenge their subject matter question before the Ninth circuit It is injust and contrary to the congressional intent when enacting the ATS *See Hamdi v. Rumsfeld* 542 U.S. 507 (2004) Petitioners were applied wrong standards by rules issued from the Prison Litigation Reform Act (PRLA) used almost exclusively by U.S prisoners

2) The Dismissed Complaint Comply with *Twombly*

Petitioners were deprived of their appeal as a right by the court of Appeals *See* Appellate Rule FRAP 3. The procedures utilized by the Ninth Circuit in this petition constitutes an egregious departure from the usual course of judicial proceedings by US Courts thereby raising grave constitutional overtones Clearly, the petition to let appeal to proceed and not affirmed by a summary disposition to stay the mandate for a writ of certiorari before judgment this Court , or to transfer venue to the Second District should have been granted as petitioners showed the Ninth Circuit was not applying legal standards of procedure and has egregiously departed from the

usual course of judicial proceeding in ATS litigation where human rights abuses are invoked . Under the facts of this case, the Ninth Circuit has denied petitioner meaningful Appellate review. Petitioners pled sufficiently facts to invoke ATS and TVPA claimed and to be granted federal jurisdiction ."Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "[D]etailed factual allegations" are not required, *Bell Atlantic v. Twombly,* 550 U. S. 544 , at 555, and the District court erred by dismissing *sua sponte* this case .because dismissal is not appropriate unless it appears beyond doubt, "even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitle him

to relief." *Id.*; *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). Petitioners plainly and adequately established the *mens rea* and act *reus on* all respondents .*See Prosecutor v. Furundziya* IT -95-17 /1 IT at 249 (Dec.10 ,1998 , 38, I.L.M, 317 1999, ICTY) .Petitioners Are Victims of a Breach of Due Process Clause and Deprived of their Right to an Impartial Court which Evades its Duty by Falsely Qualify As Frivolous and Unsubstantial Petitioners Valid Claims of *Jus Cogens* Norms Violations .It's difficult to imagine more egregious examples of the violation of a customary international law norm or a more appropriate case for ATS jurisdiction .The district court wrongly affirmed both a dismissal for failure to state a claim and a lack of subject-matter jurisdiction . A dismissal

for failure to state a claim requires a judgment on the merits and cannot be decided before the court has assumed jurisdiction. See *Bell v. Hood*, 327 U.S. at 682, 66 S.Ct. at 776; *Harmon v. Superior Court*, 307 F.2d 796, 798 (9th Cir. 1962).The issue of subject-matter jurisdiction "refers to a tribunal's power to hear a case. It presents an issue quite separate from the question whether the allegations the plaintiff makes entitle him to relief." *Morrison v. Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2877 (2010) (quotation omitted) .And the district court erred in its decision because in a whole-state persecution and foreign government controversy it was determinate to find federal claims insubstantial, not foreclosed by prior decisions of [the Supreme] Court, against *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89

(1998) .The decision conflicts with *Neitzke v. Williams*, 490 U.S. 319 (1989).and in *Denton v. Hernandez* 504 U.S 25 (1992) this Court " determined that a complaint filed *in forma pauperis* which fails to state a claim under Federal Rule of Civil Procedure 12(b)(6) may nonetheless have "an arguable basis in law" precluding dismissal under 28 U.S.C § 1915 (d). *N*eitzke. at 328-329.The district court improperly applied wrong standards like the rule 28 U.S.C 1915 against paid plaintiffs . The enactment of the Prison Litigation Reform Act (PLRA) on April 26, 1996 increased the power of federal district courts to dismiss prisoner lawsuits before service of process. Since the PLRA as passed in 1996 "even meritorious cases are barred from reaching federal court due to the insurmountable

barriers imposed by the draconian law" (see Aclu.org at http://www.aclu.org/images/asset_upload_file79_25805.pdf...) (last visited Feb 5,2010)

3)The District Court Erred by Affirming a Malpractice Case's Complaint and To Exclude Patients From the Scope of the ATS and TVPA .

The Ninth . Circuit's Decision Fails to Recognize the Distinction Between malpractice and medical crime and to analyze alleged torts that respondents 'conduct violated .Criminal cases where patients are victims from medical defendants exist in health facility *See People v. Milos Klavana Cal Rptr* 1992,15(2), 15(2): 512-515 (Cal. App. 1992). *Klavana v. State of California* 1995; 911 F. Supp: 1288-1291 (C.D. Cal 1995) .

Petitioners harm is coming from the violation of international law which obliges states to investigate an unlawful death and to punish their perpetrators , the medical professionals engaged in a severe political persecution with officials to cover up their crimes on Petitioners' father .*See Skwira v. United States* 344 F. 3d 64 (2003) ,542 U.S 903 cert. denied (nurse found to have murdered patients who died in a Veteran Affairs hospital).The *Nuremberg code* established under Allied Control Council Law No. 10,.art III,§ 1,3 (Dec.20,1945) ,was issued after Nazi doctors conducted criminal experiments on Jewish prisoners in concentration camps No one can affirm that these are malpractice cases . But the Ninth circuit did plainly error to dismiss petitioners' claims .In this context, the fact that torts are arising from medical practice cannot bar this case from

adjudication and of the analysis of the alleged international norms violated by respondents conduct and contained in the complaint therein..The second circuit rejected this approach in *Almog v. Arab Bank* PLC 471 F. Supp 2d 257 (E.D.N.Y 2007) The District Court cited *Sosa* in determining whether acts of terrorism are actionable noting that "there is no need to resolve any definitional disputes as the scope of the word "terrorism" instead "The pertinent issue here is only the act as alleged by plaintiffs violate a norm of international law" *Id* at 280-281 .This court in *Wilson v. Seiter* 501 U.S 94 (1991) affirmed that "the denial of medical care is cruel and unusual *because, in the worst case, it can result in physical torture Id* at 308 (emphasis added)(citing *Estelle v. Gamble* 429 U.S. 97 , 1976).And withholding medical treatment to inflict death is a violation of

international law *See Turner claim*, U.S v MEX. 4 R.IA.A (1927) .The District court based its conclusion entirely upon its erroneous statement that petitioners 'case is a malpractice case and to dismiss *sua sponte* petitioners 'claims. The District Court erred by denying leave to amend Fed. R. Civ. P 15 (a) requires that "leave [to amend] shall be freely given when justices so requires" and denied petitioners to be afforded an opportunity to test his claim on the merits" *Forman v. Davis* 371 U.S 178,182 1962. The court never permitted that the complaint to be " read on the light most favorable " to petitioners *Scheuer v. .Rhodes 426 U.S 232,236 (1974) Petitioners have* an arguable claim, they are entitled to issuance and service of process, even if the complaint does not state a claim under Fed. R.Civ.P. 12(b)(6). *Jackson v. Arizona*, 885 F.2d 639, 640-41

(9th Cir.1989). Petitioners' claims involve valid Federal claims of a controversy, maintained by an ongoing and severe. persecution .The district court misrepresented facts asserted in the complaint, ignore the competence of medical professional Dr Patrick Benlolo and committed egregious legal errors , and denial of due process.The law itself must not be arbitrary, and the enforcement of the law in a given case must not take place arbitrarily. See Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 172 (1993).The Appellate court *sua sponte* applied arbitrarily a local rule 3-6 to unfairly avoid a review *de novo* ;which is a legal standard of review and always applied for other ATS litigants .Petitioners brief time order was *de facto* invalidated and deprived petitioners from a fair remedy .The federal right of remedy , appeal as a

right , was unlawfully deprived to petitioners .See Fed. R. App. P 3 .The Ninth circuit evading its duty to enforce U.S. law and federal statutes on which petitioners bases their legal action .The district court has improperly never addressed the merits of this case and had no authority to dismiss the case for lack of subject mater jurisdiction "the validity of a federal-common-law claim under *Sosa* should generally be treated as a merits question, " Brief . For the U.S. as *Amicus Curiae* at 20, *Abdullahi v. Pfizer, Inc.*, No. 09-34 (U.S. May 2010)

4)The Ninth Circuit Erred Not To Hear Petitioners After Exhaustion of Their Remedies And Failed To Apply The *De Novo* Standard Of Review

Petitioners have a statutory right to be heard .See European Commission as amicus curiae of neither party 21,23,26 Sosa 542 U.S 692 (2004) (N° 03-339)

Congress "Permits federal districts courts to hear claims by aliens in violation of the law of nations "S. Rep N°102-249 (1991) at 4 . See TVPA section 2(b) *See also Flores v. Southern Peru Copper Corporation.*, 414 F.3d 233, (2d Cir. 2003).)

Aliens have a right to access to US Courts for violations of international law raising to violation of customary international law *See, Tel Oren, v. Libyan Arab Republic* . 726 F; 2D 774 ,783 '(D.C Cir. 1984) *Filartiga v. Pena-Irala*, 630 F.2d 876, 886 (2d Cir. 1980). "For adjudicating the rights already recognized by international law .*Id* at 887

A district court's dismissal for failure to state a claim or for lack of subject matter jurisdiction is always reviewed *de novo*

"Due process requires " [a]t the minimum that a person deprived of liberty "be given some kind of notice and afforded some king of hearing" *Goss v. Lopez* 419 U.S 565, 579 (1975).Aliens are under active persecution in 2011 , and should afforded a "kind of hearing " as other Plaintiffs have always been afforded in ATS litigation . the search for a violation of the law of nations is obligatory under *Sosa* [1]

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[1] *See Martinez v. City of Los Ang*eles, 141 F.3d 1373, 1383 (9th Cir.1998). *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 166-67 (5th Cir. 1999) (rejecting environmental claim against corporation); *Guinto v. Marcos*, 654 F. Supp. 276, 280 (S.D. Cal.

The legal standard review by a district court's dismissal for failure to state a claim or for lack of subject matter jurisdiction is a legal question to be reviewed *de novo*. *Arakaki v. Lingle*, 477 F.3d 1048, 1056 (9th Cir. 2007). *Taveras v. Taveraz,*477 F.3d 767 (6th Cir. 2007) *Liu v. Republic of China* 892 F.2d 1419 (9th Cir. 1989) 448 F. 3d 176 - *Bigio v. Coca-Cola Company* 448 F. 3d 176 *(2nd circ. 2006)*

1986) ("violation of the First Amendment right of free speech does not rise to the level of such universally recognized rights and so does not constitute a 'law of nations'"); *Hamid v. Price Waterhouse*, 51 F.3d 1411, 1417-18 (9th Cir. 1994) (holding that claims of fraud, breach of fiduciary duty, and misappropriation of funds are not breaches of the "law of nations").

5) The District Court Erred by Affirming Its Lacks Subject-Matter Jurisdiction On Petitioners 'Claims

'Whether a cause of action exists is not a question of jurisdiction" *Burker v. Casker 441 U.S 471,476 (1979)*

Petitioners are not foreclosed by prior decisions and a murder not matter who commits it, it's more egregious when committed by doctors who are dedicated to save patients" lives and to allege human suffering .*See* Nuremberg Doctors' case trial

Petitioners involve valid Federal claims of a controversy, maintained by an ongoing persecution

See *Hagans v. Lavine* 415 U.S 528, 538 (quoting *Ex Parte Poresky*, 290 U.S 30,32 (1933) .They were dismissed unfairly and erroneously

The District court improperly dismissed all petitioners claims *sua sponte* for lack of subject matter jurisdiction and also for failure to state a claim whereas a dismissal for failure to state a claim requires a judgment on the merits and cannot be decided before the court has assumed jurisdiction. See *Bell v. Hood*, 327 U.S. at 682, 66 S.Ct. at 776; *Harmon v. Superior Court*, 307 F.2d 796, 798 (9th Cir. 1962).

6) Petitioners were victims of a Violation of the Code of Judicial Conduct by the Ninth Circuit and of Interference with the Administration of Justice

Canon 1, 2, 3 of the U.S magistrate Code were breached by the Ninth circuit .

Petitioners are entitled to equal treatment by U.S Courts for ATS litigation "Our courts must offer

equal treatment to all litigants " see *Alcon S.S. v. M/V Nordic* Regent *654 F. 2 d152,153*

The International Covenant (ICCPR) provide them the right to a fair trial article 14(1) granting access to courts for judicial determination of rights,

and provides that "[E]veryone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal *See Dubai petroleum co v. Kazi* 12 SW 3d 71,82 (Tex. 2000) noting that { article 14(1) is laimed at assuring the proper administration of justice a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing "(citation omitted)

Plaintiffs were victims of egregious legal errors , and denial of due process, by a court assuming an adversarial role This court must be concerned that

dismissing an action prior to service disrupts the orderly process of the case, deprives the court of the assistance of opposing counsel in clarifying the issues, risks creating the impression that the Ninth circuit has abandoned the role of neutral arbiter by conducting a private litigation with the plaintiffs , and therefore bypasses the American tradition of adversarial proceedings .

Congress enact the *Foreign Sovereign Immunity Act* (FSIA) in 1976 to "'assure[e] litigants that ... decisions are made on purely legal grounds....'" *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983) (quoting H.R. Rep. No. 94-1487, at 7 (1976). Petitioners were unfairly barred in their action for non legal reasons .Enforcement of the Code of Judicial Conduct of the American Bar association ,1972, is considered a matter of public concern and

petitioners assert that "the judge's impartiality might reasonably be questioned," in the Ninth circuit proceedings because "appearance of fairness is virtually as important as is fairness itself" *Ex Parte Bryant*, 682 So.2d 39,41 (Ala. 1996) .Petitioners had a discriminatory judicial treatment by the Ninth Circuit . Petitioners were applied issued from the PRLA used almost exclusively by U.S prisoners .Petitioners were denied in their *Pro Se* standards . to consider that "The complaint of a *pro se* plaintiff is liberally construed, as it is held to a less stringent standard than is applied to a formal pleading drafted by a lawyer. *See Haines* v. *Kerner,* 404 U.S. 519, 520 (1972).The District court unfairly issued *sua sponte* affirmative defenses, which should have been raised by Respondents see Fed.R.Civ. P 8(c), 12(a) .and omitted to affirm that ATS like TVPA are subject to

equitable tolling . that petitioners can assert under extraordinary circumstances . *See Hilao v. Estate of Marcos*, 103 F.3d 767, 771-773 (9th Cir.1996); *Cabello v. Fernandez-Larios*, 402 F.3d 1148, at 1154-55 (11th Cir.2005); *Papa v United States of America* 81 F.3d 1004, 1012-13 (9th Cir. 2002.)

It affirmed false statements of immunity *sua sponte* and ignoring the statutes on which it vests these affirmations and is in deep conflict with this Court which clarify the issue in after this Court clarify the issue in *Samantar v.Yousuf* 552 F. 3d 371,(2010) (cert. granted ,affirmed and remanded) and holding that officials acting *ulta vires* are not entitled to immunity ..

B- Ninth Circuit's Approach Is Inconsistent With *Sosa* Inquiry

1) The Ninth circuit Failed to Address the issues and incredibly Failed to Invoke both Statutes on which Petitioners Base their Action .

This judicial and unfair practice of non adversary proceedings can't reach a fair result .The Ninth circuit Failed to apply well-established legal standards The District court in its order didn't examine numerous international instruments, conventions listed and invoked by petitioners in their complaint .This decision is inconsistent with *Sosa* .The Ninth court never conducted any inquiry about the respondents' ' conduct as *Sosa* mandates and it refused to notice the relevant sources of international law include treaties, "international custom," "general principles of law recognized by civilized nations," and "judicial decisions." (*Flores* 414 F.3d at, 251 that Petitioners listed in their

complaint with international norms to be alleged as violated by medical Respondents including the declaration of Tokyo and Nuremberg code (see Petitioners complaint at 29-18)

The Ninth Circuit denies to exercise its duty to search violations of the law of nations in the petitioners' complaint .U.S Courts have consistently held that the ATCA provides both subject matter jurisdiction and a claim for relief for violations of the law of nations. *Papa* 281 F.3d at 1013 *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 711 (9th Cir. 1992); *Trajano v Marcos*, 978 F.2d 493 (9th Cir. 1992).

2) The Ninth Circuit Fails To Comply with *Sosa* Approach

The appropriate question is whether the specific acts alleged clearly fall within the conduct proscribed .But

the court makes a misreading of *Sosa* and of the ATS itself, by refusing to examine that in the four corners of the complaint ..medical respondents were alleged to violate international law norms , *jus cogens* norms to breach the fundamental binding international obligations of medical ethics and of to violate this norm , consisting in the prohibition for a physician of harming a patient .:

.This norm "prohibition for a physician of harming a patient " has attained the status of binding customary international law. *See* Gillon R. *"Primus non nocere and the principle of non-maleficence* Br. J. 1985, 291:130-1 . The court *didn't* search for a violation of law of nations in *jus cogens* norms violations raised in petitioners' claims and logically *didn't* find it.(emphasis added) .Nothing for the purpose of ATS litigation forbids a court to search in

a European medical case and to apply *Sosa* inquiry as mandated by this Court .The Second circuit applied *Sosa test to a* medical case in Africa and found a violation of a specific, obligatory and universal" norm .

C- Ninth Circuit's Decision is in Conflict with Congressional and U.S Policy for Human Rights Abuses by Unfairly Barring this Case for Non legal Reasons

1)Dismissal of Petitioners' Claims Contravenes Congressional Intent and Nullify the ATS and TVPA Statutes For European Citizens Petitioners' life security are threatened and are living under persecution .

Justice Marshall recognized two centuries ago that our judicial tribunal "are established .... To decide on

human rights *Fletcher v. Peck* 10 U..S (6 cranch) 87,133 (1810); For ATS litigation it' s more true .

It's evident that patients encompass the term « individuals » in both statutes . The implicit reading of the statute and construction by Ninth circuit is manifestly contrary to the statute's plain meaning It is an established canon of construction that, when interpreting statutes, courts are generally obligated we must avoid interpretations that would produce absurd results. *See, e.g., United States v. Wilson,* 503 U.S. 329, 334, 112 S.Ct. 1351, 117 L.Ed.2d 593 (1992); *Ma v. Ashcroft,* 361 F.3d 553, 559 (9th Cir.2004) (rejecting and affording no deference to a legal interpretation by the BIA that "contravenes the statute and leads to absurd and wholly unacceptable results").Excluding patients from the scope of ATS as

the Ninth Circuit did ,would create an abyssal gap not intended by Congress when it enacted the ATS . The vast majority of international law principles apply to state actors, not to private parties. *See, e.g.*, *Sosa*, 542 U.S. at 720;

The Ninth circuit ,misread the definition of the ATS which provides that *any* "violation of 'specific, universal, and obligatory' international norms" — *jus cogens* or not — is actionable under the ATCA. *Papa*, 281 F.3d at 1013 (quoting *Marcos II*, 25 F.3d at 1475). Thus, a *jus cogens* violation is sufficient, but not necessary, to state a claim under the ATCA. Fregerson J. in Doe v.. *Unocal 995 F. 3d.932,945,n.15* (9th Circ. 2002) and refused to make the three evaluations for jurisdictional requirement of the ATS it considered *in Coalition Gov't of the Union of Burma v. Unocal* 176 FRD 329,345 (C.D Cal 1997) in

order not to accept the binding norms of international law, the violation of these norms by respondents and the acceptation of these norms by U.S .

III· PETITIONERS ALLEGE VALID CLAIMS AND FIVE CLEAR AND UNAMBIGUOUS VIOLATIONS OF THE LAW OF NATIONS UNDER *SOSA* STANDARD AND ACTIONABLE UNDER THE ATS

The abuses at issue constitute violation of international norms prohibiting state·sponsored murder, crimes against humanity , persecution, torture, cruel, inhuman degrading treatment and the claims fall within the prohibition of these international norms actionable under ATS .

These allegations falls under a clear and well-accepted norm of customary international law

No nation officially supports or condones cruel or ill-treatment to patients by physicians or nurses .These unlawful acts are universally condemned by the family of nations which recognizes medical practice to be used only .for the patients ' bests interests , for their life and health .Petitioners allege State action in Respondents' conduct violating only *jus cogens* norms violations . "If a norm is obligatory in nations it is known as a "*jus cogens*" and violations of such norms are by themselves sufficient to invoke ATCA jurisdiction See *Doe v.Unocal* 395 F. 3d 932 ,945 n.14, n15 (9th Circ . 2002)

A- Petitioners' Claims Are Based On "Specific, Obligatory and Universal" Norms

1) Respondents' Conduct violate the Physicians' Obligations of "Do Not Harm" Patients and the Physicians Obligations of the Universally and Respected Role of Healers

The *Restatement (Third) of Foreign Relations Law* (1987) agrees with this standard and provides that the norm is established where there is acceptance and recognition by a "large majority" of states, even if over dissent by "a very small number of states."Hence, a norm must meet four requirements in order to attain the status of a peremptory norm: 1) it is general international law; 2) it is accepted by a large majority of states; 3) it is immune from derogation; and 4) it has not been modified by a new norm of the same status. The prohibition for medical

professionals of harming patient clearly meets those requirements.

,This Court in many cases including death penalty cases deferred medical ethics in *Washington v. Glucksberg* 521 U.S. 702, 731 (1997) *Washington v .Harper 414 U.S 210,223 n8 (1990) Roe v. Wade 410 U.S 113,130-132 (1972) Brief of the AMA as* amicus curiae in *Ferguson v. City of Charleston* 532 U.S 67,76-78 (2001) n°99-936)2000WL 1506967 at 3-4

This norm is embedded in International Red Cross Committee (IRCC) Customary International law art ; 92 of International Red Cross Committee (IRCC)

See the ICRC Report on Guantanamo , "*The Treatment on Fourteen High Value Detainees CIA Custody*" ,Feb. 2007. recalling the medical ethics of not harming patients.

All harm suffered by Petitioners are raising from the violation of this norm which was violated by Defendants who never contest the criminal allegations of petitioners and were filing false criminal complaints against petitioners immediately after the death of their father .Petitioners were subjected to a violent oppression and persecution since doctors, physicians working in this Bordeaux hospital decide to withhold medical treatment and to collaborate with foreign officials to destroy the right to life the right to safety the right to health of every member of a Jewish family .These methods which was used by respondents " Conduct of blacklisting and tracking a family to withholding treatment, to threaten their lives their freedoms and their safety as patients are unlawful and a violation of

international law and medical ethics and for Petitioners a painful Holocaust's methods remembrance See *Edwin Black "The Holocaust and IBM"*, in order to adversely affect their physical or mental health is at minimum a form of cruel, inhuman or degrading treatment or punishment.

Respondents were alleged to act against the "fundamental role" of persons subject to the principles of medical ethics is "to alleviate the distress of his or her fellow men, *and no motive, whether personal, collective, or political shall prevent against this higher purpose.*"World Medical Association , *Declaration of Tokyo* (adopted by the 29th General Assembly at Tokyo) (Oct. 1975) (emphasis added).Healthcare workers worldwide are obligated, according to principles of medical ethics, to treat the sick and wounded without regard to

politics, nationality, religion, race, sex, or other such factors .Health professionals are bound to follow the principles of medical ethics in carrying out all of their duties .The WMA *International Code of Medical Ethics* affirms a physician's duties by providing that: "A physician shall always bear in mind the obligation to respect human life. A physician shall always act in the patient's best interest when providing medical care. A physician shall owe his/her patients complete loyalt".. ,*See Declaration of Geneva* (adopted by the General Assembly at Geneva) (Sept. 1948) (as amended in Aug.1968, Oct. 1983, and Sept. 1994 and editorially revised in May 2005 and May 2006);

2)-Petitioners Allege Summary Execution of Their Both Parents Actionable Under ATS and TVPA

> The extrajudicial killing is , defined as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court..." 28 U.S.C. § 1350 note ("TVPA") § 3(a).

The wrongful death of Elie Benlolo in Bordeaux as the extrajudicial killing by medical state actors satisfy the extrajudicial killing norm requirement and is actionable under ATCA ad TVPA .

The University Hospital of Bordeaux is a crime scene where no investigation no civil or criminal remedy was offered to petitioners .More shocking and terrific it becomes the source of a harsh persecution of petitioners and even against their disabled mother Semha Benlolo victim in 2001 of deadly violence in Paris' public hospitals .These were never condemned, investigated and satisfy petitioners allegations in their complaint that the French state

violates the customary international law because "as a matter of state policy condones encourages, and murder, torture or other cruel, inhuman or degrading treatment, or punishment a pattern of gross violations of internationally recognized human rights .This act of killing a patient in a public hospital is twice actionable under ATS as a murder and under .the Third restatement §702 at subsections a), c) § g) .,

U.S. courts hearing ATS cases have found claims for extrajudicial killing to be actionable as violation of customary international law norm . *See, e.g.*, *Filartiga* at 884; *In re Estate of Ferdinand Marcos, Human Rights Litigation*, 25 F.3d 1467, 1475 (9th Cir. 1994) .Extrajudicial killing meets the high bar of Sosa .

See Mujica v. Occidental Petroleum Corp., 381 F.Supp. 2d 1164,1178, 1179 n.13 (C.D. Cal. 2005) .

There is a customary international law against state-sponsored extrajudicial killing , ..Deaths of Semha and Elie Benlolo are committed under a breach of the right to life at two different cities , Bordeaux and Paris

When Congress enacted the TVPA statute it considered the TVPA" incorporated into U.S law the definition of found in customary international law .S. Rep. N° 102-249 at 6 (1991) .

The denial of investigation and the will to give impunity to their perpetrators is under international law a violation of the right to life .This alleged criminal deaths satisfies and encompasses the definition given by the Special Rapporteur for the United Nations ,and plainly falls in the ECtHR

jurisprudence .in cases involving patients the ECtHR has always found this violation to be a violation of the right to life .

The consequences to deny investigation to victim's family are judicially treated by international courts as a cruel, inhuman treatment by international courts *See S-E v. Argentina* U.N Human Rights Committee, Communication No. 275/1988 a/ 26 March 1990 Even if there is not any complaint of the victim's family *See* European Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS No. 5), 213 U.N.T.S. 222, art. 2 *entered into force* September 3 ,1953...

When individuals are killed within a ratifying state's jurisdiction, both the European court of human rights ECtHR and the Inter-American court of human rights IACtHR have interpreted the ECtHR

and the IACHR as imposing a positive duty on the state to conduct an effective investigation. This duty arises from a person's "right to life" in combination with the State's obligation to recognize and guarantee the rights in the respective Conventions. A proper investigation is necessary to secure the effective implementation of the domestic laws, which protect the right to life. Further, the failure to investigate, especially where there is a pattern of extra-judicial killings, creates a culture of impunity that is incompatible with this right. U.S. courts hearing ATS cases have always found claims for extrajudicial execution to be actionable. *See, e.g.*, *Filartiga* at 884;; *In re Estate of Ferdinand Marcos, Human Rights Litigation*, (Marcos II), 25 F.3d 1467, 1475 (9th Cir. 1994); *Id* ("The prohibition against

summary execution...is similarly universal, definable, and obligatory.").

Methods used by medical respondents to cover up the truth about the death of their victims in the Bordeaux Hospital , denying medical records 'access , are similar in purpose to the disappearance of bodies to ensure immunity to their perpetrators see *Case of Velásquez-Rodríguez v. Honduras.* Judgment of July 29, 1988. Series C No. 4; the IACtHR discussed disappearances that occurred in Honduras from 1981 to 1984. The IACtHR affirms and compensated Velasquez Rodriguez family even that his corpse was not discovered . *See Silih v.Slovenia* (20009) 49 E.H.R.R 37 *Eriksson v. Italy* (1999) 39 E.H.R.R 45 affirming that failure to investigate the death of a patient receiving medical treatment violated article 2 of the right to life (i.e. article 6 of

the ICCPR)..This death satisfies and encompasses the definition given by the special Rapporteur for the United Nations ,and plainly falls in the ECtHR jurisprudence .in cases involving patients the ECtHR has always found this violation to be a violation of the right to life[2].

Methods used by medical Defendants to cover up the death of their victims in the Bordeaux Hospital , to deny forever medical records 'access to a physician

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[2]See Katja Luopajarvi *Extrajudicial Summary or Arbitrary Executions the Sscope of the Mandate of the Special Rapporteur* , Institute for Human rights Åbo Akademi University .Mar19.,2001 *http://web.abo.fi/instut/imr/norfa/katja2_extrajudicial.pdf* (last visited 5 Feb ,2010) *See also Principles on the Effective Prevention and Investigation of Extra-Legal Summary or*

after the death of his father , are similar in the intention to the after the death of his father , are similar in the intention to the disappearance of

bodies to ensure immunity to their perpetrators in *Velásquez-Rodríguez* .

3)-Petitioners Alleged Political Persecution Which is A Crime Against Humanity Under International Law

Persecution underwent against a social group , and Jewish familial entity , by hospitals and medical

respondents is a violation of international law enshrined in Articles 7(1)(h) and 7(2)(g) of the Rome Statute of the International Criminal Court

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Arbitrary Summary Executions , United Nations Economic and Social Council ,Res. 1989/65 of 24 May 1989

(ICC) and Article 7(1)(h) of the Elements of Crimes is a crime against humanity[3] when it is associated as In petitioners ' case with other denial of fundamental rights ,Rome Statute of the ICC ,17 July 1998 statute U.N Doc.A/Conf.183/9(1998) entered in force in July

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[3] See Jessie Chella, "*Persecution :a Crime against Humanity in the Rome Statute of the International ,Criminal Court* "Aug. 2004 ,. available at : http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1056&context=theses(last (last visited Feb . 5, 2010).

.This state-sponsored persecution against Jewish is proscribed under international law , and a violation of the Nuremberg Charter and amounts to the 'specific , universal and obligatory " norm and satisfy *Sosa* requirement .This claim is actionable under ATS and petitioners are entitled to a relief .

The Wiwa court stating that crimes against humanity violate "a norm that is customary, obligatory, and well-defined in international jurisprudence". *See Wiwa v. Royal Dutch Petroleum Co.* Civ; N° 96 8386 2002 WL 31 9887 (S.D.N.Y Feb. 28,2002) at *9 See also , *Almog v. Arab Bank* PLC 471 F. Supp 2d 257 (E.D.N.Y 2007)

Respondents' conduct meets the requirements for economic Persecution against Dr Patrick Benlolo in his right to work as a doctor Jessie Chella, and lost its work *See Kovac v. INS* 407 F.2d 102 (9th Cir. 1969),

U.S Department State strongly condemns the persecution of healthcare as human rights violators *See* Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, *Serbia-Montenegro Russia ,- Colombia ; Country Reports Country Reports on Human Rights Practices 1999* (Feb. 23, 2000).

Customary humanitarian international law prohibit parties from punishing those who carry out medical activities compatible with medical ethics.

Respondents are liable for violating customary international norms a wide-scale health discrimination and generalized persecution with consequences spreading until the right to health, right to work for physician and patients

See Customary Humanitarian International Law Rules 26, 109,110 ,ICRC

See also Geneva Convention I article 12, 18 ;Additional Protocol II article 7,9,10 ,18 ; Additional Protocol I Article 16 ; Geneva Convention II Articles 10,15 Geneva Convention III Articles 3(2) , 16 ; Geneva Convention IV Article 10 .

A Family was and is always collectively targeted punished by hospital of Bordeaux , French Board of Physicians after a criminal complaint Methods are systematic because of their improbability of a random occurrence .Crimes have a repetition in Paris against their mother Semha Benlolo

Group specifically targeted , tracked all over French Hospitals like guinea pigs for CDIT and torture ..

Respondents are acting against this fundamental and specific ethical norm of non maleficence and as consequence let medical professionals with a license

to kill, a license to torture patients, colleagues and to commit cruel, inhuman, degrading punition or treatment which are proscribed under international law . The question, however, is whether the facts alleged by Petitioners in this case against Respondents meet the *Sosa* standard, and this question was never addressed by the Ninth Circuit which evaded its duty .*See Restatement Third of Foreign Law (1987) § 702 ("*A state violates international law if, as a matter of state policy, it practices, encourages, or condones . . .murder, torture . . . .").Respondents are acting against this fundamental and specific ethical norm and as consequence let medical professionals with a license to kill, a license to torture patients, colleagues and to commit cruel, inhuman, degrading punition or treatment which are proscribed under international

law . State-sponsored Anti-Semitism is an universal concern and for the Unites states are very implied in this fight *See* The G*lobal anti-Semitism Review Act* Public Law 108-332, 118 Stat.,*1282 enacted on* Oct; 16, 2004. 1282) . It orders the U.S. State Department to monitor and combat worldwide anti-Semitism, reporting annually to the United States Congress ; the creation of *European Organization for Security and Cooperation (OSCE) against anti-Semitism* ,55 states, and the U.S delegation ,Vienna, 19 June 2003; and the case *Gypsy* International Recognition and Compensation Action association (GIRCA) *v. IBM 4C.113/2006 ,11 Aug.2006 Geneva. See Edwin Black," IBM and the Holocaust"* New York ,2002

4) Petitioners Alleged Claims Of 'Cruel, Inhuman Or Degrading Treatment Or Punishment

Article 7 of the International Covenant prohibits cruel, inhumane, or degrading punishment. International Covenant on Civil and Political Rights (ICCPR), opened for signature Dec. 19, 1966, art. 7, 999 U.N.T.S. 171, 175 (entered into force Mar. 23, 1976). The United States agreed to abide by this prohibition only to the extent that the Fifth, Eighth, and Fourteenth Amendments ban cruel and unusual punishment. *See* 138 Cong. Rec. S-4781-01, S-4783 (1992) *Sanchez v. Banco Central de Nicaragua* 770 F.2d,1385,1387 (5th circ 1985) recognizing a right not to be subject to cruel to cruel punishment as incorporated in international law" *See Jama v. INS* 22 F. Supp. 2d 353 (D.N.J 1998) (holding that the poor and inhumane treatment given to alien asylum-seekers was actionable under ATS)

"The CIDT violates the law of nations " *Bowoto v. Chevron* Corp. 557 F. Supp 2d 1080,1093-95(N.D Cal 2008) and "the CIDT is actionable under the ATS " *Wiwa* 2002 U.S Dist. LEXIS 3293 at *21-27

B-Petitioners Allege Personal Jurisdiction on University Hospital of Bordeaux Respondent Which Have Minimum Contacts with California .

This issue was not addressed by the Ninth circuit .There is no question that medical activity is an economic activity .and that this Respondent has contacts with the state of California .

See e.g *Republic of Argentina v. Veltower* 504 U.S. 607 (1992) ,*Gregorian v. Izvestia*, 871 F.2d 1515,

1527 (9th Cir. 1989) quoting *Zedan v. Kingdom of Saudia Arabia*, 849 F.2d 1511, 1514 (D.C.Cir.1988)

This assertion for federal jurisdiction was completely ignored by the Ninth circuit under Federal rule 4(k) (1) (A) Personal jurisdiction on hospital of Bordeaux , and Economic activity exceptions see FSIA 28 U.S.C 1605 a (1) .Dr Patrick Benlolo was present on California when his father was admitted in Bordeaux Hospital in 2000.

There is a direct effect of unlawful death of Elie Benlolo in France with the California state .With service , and Petitioners have personal jurisdiction on respondents that satisfied minimum contacts with the State of California *International Shoe v. Washington,* 326 US 310 (1945), p. 315.

There is a direct effect of unlawful death of Elie Benlolo in France with the California state .

There is no question that medical activity is an economic activity .and that this Respondent has contacts with the state of California .See *Saudi Arabia v. Nelson,* 507 U.S. 349 (1993), *Burger King v. Rudzewicz*, 471 U.S. 462, 472, 479, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)

IV-THIS COURT MUST RESOLVE THE SPLIT WITH THE SECOND CIRCUIT IN *ABDULLAHI* AND ADDRESS THE IMPORTANT ISSUES

The Ninth Circuit's radical departure from principles of litigating ATS claims by its refusal to adjudicate this case where patients, a doctor and finally a whole Jewish family is victim of medical Respondents of most severe human rights abuses

A-Ninth's Decision Conflicts with the Second District . in *Abdullahi* Where Medical Non State Actors Violated the Law of Nations against their Patients

Not surprisingly, the Second Circuit looking to medical ethics in the case *Abdulahhi v. Pfizer* Inc .562 F 3d 163 (2nd Circ. 2009) cert denied , 130 S. Ct. 3541 (2010).

has reached diametrically opposed conclusions on these same issues in a case involving patients victims by an American private corporation of a non consensual medical experimentation. The vast majority of international law principles apply to state actors, not to private parties. *See, e.g., Sosa*, 542 U.S. at 720; *See Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488-89 (1983). . So there is a manifest

discrepancy when state actors conduct in the case of petitioners .State Actors couldn't be accountable for numerous violations of the law of nations in the medical practice with a forever and state-sponsored persecution of Jewish persons , patients and physician by others physicians, a medical facility and the Board of Physicians are violations of manifest norms of customary international law .Modern medicine by definition is recent , and modern bioethics comes from Nuremberg G.Annas The Legacy of the Nuremberg Doctors' Trial to American Bioethics and Human Rights Min.. J.L. Sci § Tech. 2009,10(1):1940 .

. This court must resolve this split .Patients like individuals are protected by international law .For

the past 200 years, this Court has consistently recognized, as a fundamental principle of statutory construction, that absent a clear statement of congressional intent, a statute should not be construed in a manner that is inconsistent with international law. *Murray v. Schooner Charming Betsy,* 6 U.S. (2 Cranch) 64, 118 (1804) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.") (Marshall, C.J.); *F. Hoffmann-La Roche Ltd. v. Empagran S.A.,* 542 U.S. 155, 164 (2004) (noting that the Court assumes Congress will generally attempt to follow international law).

The Second circuit didn't qualify *Abdullahi* and other Plaintiff's claims of frivolous, or insubstantial because harm came from a medical practice .

B. Petitioners 'Claims are of Universal Concern

The State-sponsored persecution of patients by French physicians and medical facilities , the State-sponsored persecution of Jews with the *de facto* deprivation of the right to life are of universal concern and clear and unambiguous violation of customary international law. Because petitioners exhausted their remedies they can affirm that the violation of the ethical norm "do not harm " has attained the entire European Continent .the violation of the right to life of parents' petitioners is no more no less the abandon of medical ethics and a license to harm patients and a license to kill unlawfully allowed to physicians and nurses .Petitioners are entitled to a remedy under the ATS .See H. G. Gallagher *See Trust Betrayed: Patients, Physicians, and the*

License to Kill in the Third Reich: , Vandamere Press 1995 .Two murders committed by state actors in French hospitals , as alleged in the Complaint, in the course of an ongoing persecution , can and compel to confer subject matter jurisdiction on federal courts under the ATS and the TVPA because petitioners have exhausted their local and regional remedies before filing before the District court of California ,Respondents' conduct have engaged in official action for purposes of jurisdiction under the ATS and the TVPA. The Ninth circuit erred by denying to adjudicate this case .

V. IMMEDIATE REVIEW IS URGENTLY NEEDED

The Ninth Circuit erred to dismiss petitioners , bypassed Sosa test on petitioners claims and creates

a new kind of hurdle to ATS by judicially-created barriers and by applying wrong standards . Furthermore, in reaching its decisions , the Ninth circuit should have avoided "interpretations that would produce absurd results." *Azarte* v. *Ashcroft*, 394 F.3d 1278, 1287 (9th Cir. 2005).All Petitioners' claims are actionable under the ATS because respondents unquestionably violated established international law norms and an international ethical norm against harming patients or persecution the medical profession in times of peace and in times of war .Respondents' conduct fall within the prohibition against persecuting Jewish patients and physicians .Since 2000 petitioners are deprived of all their fundamental human rights ."The right to life and personal security is not only sacred in the estimation of the common

law but it is inalienable "*Martin v. Commonwealth* 184 Va 1009 1018-1016 37 S.E 2d 43,47 (1946) .The Ninth Circuit shirks its duty and deprives petitioners from remedy .A crucial component of international human rights law is the right to fair and adequate compensation for violations of human rights, including the summary executions, torture and other acts of abuse alleged by plaintiffs here. This Court must grant the certiorari and let the case proceed to defend "the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions "*Powell v. Alabama* 287 U.S 45, 67 (1932) (internal quotations marks omitted) by granting the petition . The United Sates must fulfill its obligations by fairly adjudicating this case according to congressional intent .The Ninth circuit never addressed the issue and let European

aliens and petitioners in total confusion and manifest injustice without any remedy .It narrows the scope of the ATS and nullify this remedy .Petitioners want to confront their abusers for the seek of justice and dignity. Review is urgently needed not only to resolve the conflict between the Ninth and Second Circuits, but more importantly to clarify the proceeding standards .in ATS litigation

CONCLUSION

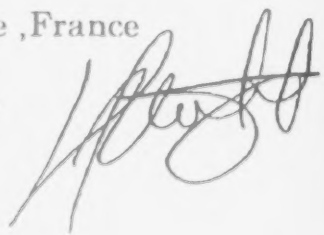
.For these reasons in addition to those set forth in the Petition, under rule 10 , certiorari should be granted and the decision of the court of appeals below should be reversed.

Respectfully submitted

February 6, 2011 , Patrick Benlolo M.D

11 rue d'Ormesson 93 800 Epinay sur Seine ,France

phone + 33 627-693-696 *Pro Se Petitioner*



APPENDIX A

GERARD BENLOLO et al

Plaintiffs) N° 10-56167

)D.C N° 2 :10-cv-675-UA

) Central District of California, Los Angeles

FRENCH NATIONAL BOARD OF)

PHYSICIANS ; et al.)

Defendants-Appellees ORDER

<stamped> <<FILED >> OCT 13 ,2010 MOLLY C.DWYER ,CLERK

Before O' SCANNLAIN TROTT W.FLETCHER circuit judges

A review of the record and the response to the July 27,2010 order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require argument .*See United States v.*

Hooton 693 F. 2d 857,858(9th Cir.1982)(per curiam)(stating standard). Accordingly , we summarily affirm the district court's judgment .Appellant's motion to stay the mandate is denied See Fed.R. App.P.41(d)(2)(A)(motion must demonstrate petition for writ of certiorari would present substantial question and good cause)

AFFIRMED

APPENDIX B

ATTACHMENT TO ORDER

Gerard Benlolo et al. v. French National Board of Physicians et al.

Case N° CV 10-03675

Attachment to Order

Because Plaintiff is seeking to proceed in Forma Pauperis

The Court shall review such a complaint "as soon as practicable after docketing " Pursuant to 28 U.S.C §1915(e)(2), the District court is required to dismiss a complaint if the Court Finds that the complaint (1) is legally frivolous or malicious ,(2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief from a defendant immune from such

Relief. 28 U.S.C §1915(e)(B) (re: all in forma pauperis complaints .) A complaint may also be dismissed for lack of subject matter jurisdiction

,pursuant to Fed. R. Civ. P. 12(b)(1) .Neitzke v. Williams 490 U.S 319 327 n.6, 109 S. Ct. 1827 , 104 L.Ed. 2d 338 (1989) (unanimous decision) (patently insubstantial complaint May be dismissed under rule 12(b)(1) for lack of subject matter Jurisdiction ."whenever it appears by suggestion of the parties Or otherwise that the court lacks jurisdiction of the subject Matter , the court shall dismiss the action" Fed .R. Civ. P.12(h)(3) emphasis added) .A Challenge to the Court's subject Matter jurisdiction can be raised at any time , including sua sponte by the Court. Emrich v. Touche Ross and Co 846 F. 2d 1190,1194 n. 2 (9th Cir. 1988)

Any complaint filed in this court must contain (1) a short and plain statement of the grounds upon the

Court's jurisdiction depends and , (2) a short and plain statement of the claim showing that the Plaintiff is entitled to relief; Fed. R. Civ. P. Rule 8(a) . "The Plaintiff must allege with at least some degree of particularity overt which Defendants

engaged in that support the Plaintiff's claim " Jones v. Community Redevelopment Agency 733 F. 2d 646, 649 .Rule 8 is designed to provide Defendants with fair notice of the claims Against them and the grounds on which those claims rest.See McKeever v. Block 932 F. 2d 795 ,798 (9th Circ.1991) McHenry v. Renne ,84 F. 3 d 1172 ,1177 et seq. (9th Circ.1996) (complaint properly dismissed under Rule 41 for failure to comply with Rule In Court Order) Gerard Benlolo Jean Marc Benlolo and Patrick Benlolo French citizens have filed a "Complaint for

Extrajudicial Killing , Torture,,Crimes against Humanity; Genocide ;Violation of ,Humanitarian Law . Political Persecution ;Slavery ;Cruel,Inhuman or Degrading Treatment ;Arbitrary Arrest or Detention; Negligent ,Emotional Distress ; Conspiracy ; Wrongful Death " against Defendants French Hospital Board of Physicians ; University Hospital of Bordeaux et al. Plaintiff lists 14 French medical .

Doctors and others are Defendants .It appears Plaintiff is suing On his own behalf as well as his deceased father , Elie Benlolo ; who passed away in May of 2000 (See Complaint at 1-2) Plaintiff has failed to state a constitutional violation or

a violation of a federal statute that would confer jurisdiction upon this Court .Specifically, Plaintiffs'

allegations and the nature of his claims are unclear and Plaintiff fails to identify the specific theories upon which the asserted claims against the Defendants are based .While Plaintiff's alluded to federal statutes in his complaint , it appears Plaintiff has alleged malpractice and negligence which does not confer federal jurisdiction . Moreover, Plaintiff's claims would be barred by the statute of limitations .

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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CV 10-3675 UA

Gerard Benlolo et al .

V. ORDER RE LEAVE TO FILE ACTION WITHOUT PREPAYMENT FOR FILING FEE .

French National Board

of Physicians et al.

IT IS RECOMMENDED that the request of plaintiff/petitioner to file the action without prepayment of the filing fee be DENIED for the following reason(s)

X inadequate showing of indigency

6/17/10 s/ AUDREY B. COLLINS